IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.2054 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BOMBAY GARAGE (AHMEDABAD) LTD.

Versus

STATE OF GUJARAT

Appearance:

MR SB VAKIL, Sr. Counsel with MR ASPI M KAPADIA for Petitioner Nos. 1-2

MR MR MENGDEY, AGPW LEADER for Respondent Nos.1-4

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 25/07/2002

ORAL JUDGEMENT

This is a petition filed by petitioner No.1, a Limited Company through its Manager, petitioner No.2 challenging orders dated 05-10-1998 passed by Respondent No.4, order dated 12-12-2000 passed by Respondent No.3 and order dated 29-11-2001 passed by Respondent No.2 praying for the following relief :

"(A) to quash and set aside the impugned orders dated 05.10.1998, 12.12.2000 and 29.11.2001 passed by the respondent nos.4,3 and 2 respectively (at Annexures 'A','B' and 'C' respectively). "

2. The petitioner was visited by officials of Civil Supplies Department on 2/3-07-1998 and on 07-07-1998 an order of suspension came to be passed by Respondent No.2. On 29-09-1998 a show-cause notice was issued by Respondent No.4 to the petitioner and the petitioner was called upon to reply by 03-10-1998. On the said day i.e. 03-10-1998, the representative of the petitioner appeared and sought time in view of the short period available with the petitioner to furnish its explanation. Accordingly, the matter was re-fixed on 05-10-1998 and written submission was filed seeking certain documents on which reliance was placed by the authority for passing the order of suspension and issuing the show-cause notice. However, on the same day i.e. 05-10-1998 respondent No.4 passed the order cancelling the licence issued to the petitioner under Gujarat Essential Articles (Licensing, Control and Stock, Declaration) Order, 1981 and further directed forfeiture of the entire deposit.

3. Being aggrieved from this order the petitioner went in appeal before Respondent No.3 who for the reasons stated in his order dated 12-12-2000 confirmed the order of lower authority. The petitioner's revision filed against the order of the appellate authority also met with the same fate on 29-11-2001.

4. Mr.S.B.Vakil, learned senior Counsel appears with Mr.A.M.Kapadia on behalf of the petitioner while Mr.M.R.Mengdey, learned A.G.P. appears for the respondents.

5. Mr.Vakil has placed his case on two fold contentions; firstly, that the impugned order viz. the original order dated 05-10-1998 was barred by limitation taking into consideration provision of Clause-8 with special reference to sub-clause (2) of the said clause of the Gujarat Essential Articles (Licensing, Control and Stock, Declaration) Order, 1981, and secondly, the order dated 05-10-1998 was passed in violation of principles of natural justice. He, therefore, contended that the entire proceedings stand vitiated and the orders deserve to be quashed.

6. In relation to the first contention it was submitted by him that the search and seizure was carried out on 03-07-1998 and taking into consideration sub-clause (2) of Clause-8 of the Gujarat Essential Articles (Licensing, Control and Stock, Declaration) Order, 1981 it was incumbent upon the authority to pass an order of cancellation within a period of 90 days as according to him the phraseology used in the said sub-clause did not permit any other interpretation. In this connection it was pointed out that though the said contention was specifically taken before the Respondent No.4 - authority, the same has not been dealt with and the appellate authority and the revisional authority also have not considered this aspect.

7. As against this, the learned A.G.P. Mr.Mengdey pointed out from the order of suspension dated 07-07-1998 (Anneuxre-H) that the authority had used two contradictory phrases while passing the order of suspension and hence if the same are taken into consideration one can state that the order having been passed on 07-07-1998, the period of 90 days should be taken to have commenced from the said day. He submitted that if the limitation was computed accordingly, the order made on 05-10-1998 was within the period of limitation and the petitioner can have no grievance.

8. Mr.Vakil in rejoinder submitted that none of the authorities have dealt with the principal contention raised by the petitioner and it was not permissible for the learned A.G.P. to make out a new case at this stage. That the affidavit-in-reply also did not deal with the said aspect though in the petition the contention was specifically raised. It was also submitted that it would not be possible for the Court to read the order in the manner canvassed by the learned A.G.P. especially when the authority passing the order had chosen not to issue any corrigendum.

9. Though elaborate contentions were raised by both the sides in relation to the ground of limitation, in light of what follows hereinafter it is not necessary for the Court to decide the said issue on the facts and circumstances of the case for the present.

10. The next contention raised by Mr.Vakil regarding violation of principles of natural justice deserves immediate acceptance as the facts go to show. The petitioner was served with show-cause notice dated 29-09-1998 calling upon the petitioner to furnish reply on 03-10-1998. The petitioner appeared on 03-10-1998 and

pointed out that the intervening two days were public holidays and the time available with the petitioner to reply to the show-cause notice was very short and he should be granted extension to furnish proper reply. Respondent No.4 - authority hence fixed the matter for furnishing reply and hearing on 05-10-1998. On 05-10-1998 the petitioner submitted in writing that the petitioner be supplied with the four documents stated in its reply which are as under :

" (1) Copy of the Panchnama.
(2) Copy of the statements of persons recorded at the time of conducting investigation.
(3) Copy of the materials collected from the petrol pump during the course of investigation.
(4) Copy of the FSL Report. "

It was submitted by Mr.Vakil that respondent No.4 did not accede to the request made on behalf of the petitioner and brushed aside the same by stating that the request was made only with a view to delay the proceedings and the petitioner was aware about the gravamen of the charges. It was also observed by Respondent No.4 in his order that the petitioner could have asked for the said documents on 03-10-1998 when time was sought for and further that order of suspension dated 07-07-1998 having not been challenged, it was not open to the petitioner to adopt such dilatory tactics.

11. On 06-07-1998 the petitioner had made a request for certified copies of various statements and panchnama and the said request came to be turned down on 06-07-1998 itself. The reason advanced was that as the matter was under investigation it was not possible to supply the documents in question. This, according to Mr.Vakil, coupled with the observations made by Respondent No.4 authority in its order would go to show that the respondents were bent upon passing an order without giving full and proper opportunity to the petitioner to meet with the case which was being made out against the petitioner. He further submitted that the appellate authority has reiterated the reasons advanced by Respondent No.4 in the original order without applying its mind or assigning any independent reason why the petitioner was not entitled to the documents which were asked for.

12. The revisional authority despite accepting that the petitioner was not provided with the documents as demanded, brushed aside the objections by stating that the petitioner was fully aware of the details of the offence it was charged with and there was no violation of principles of natural justice. He also accepted the reason advanced by Respondent No.4 that asking for documents on the date of hearing was merely with a view to delay the proceedings and not with a view to furnish any reply.

13. The learned A.G.P. Mr.Mengdey in connection with this contention submitted that if the order of seizure dated 07-07-1998, the show-cause notice dated 29-09-1998 and the order dated 05-10-1998 passed by Respondent No.4 are seen it would be apparent that no reliance has been placed by the authorities on the statements demanded by the petitioner and hence it could not be stated that there was any violation of principles of natural justice. He submitted that documents on which reliance had not been placed by the authority were not necessary for furnishing the reply or explanation and hence the authorities were justified in rejecting the objections raised by the petitioner before them.

14. Even if, what is contended by Mr.Mengdey can be said to be correct, it is very apparent from the order of the Respondent No.4 authority that specific reliance has been placed on the panchnama under which the samples were collected and forwarded for testing. Furthermore, the authority has categorically placed reliance on the report of the Forensic Science Laboratory and on basis of the said report the authority proceeded to pass the impugned order holding that the petitioner was indulging in adulteration of petrol by mixing solvent with the petrol. This aspect assumes importance when one looks at the order passed by the revisional authority wherein categorically at five places in the order, the revisional authority in no uncertain terms accepts that the said documents had been asked for by the petitioner and were not supplied to the petitioner.

15. The contention raised by Mr.Mengdey about non-reliance of various statements falls to the ground when the order of revisional authority is read. For the purpose of establishing the charge against the petitioner and while meeting with the contention of the petitioner, to the effect that the employees of the petitioner were indulging in the activities without the knowledge of the petitioner, the revisional authority has categorically

stated that adulteration had been carried out under the instructions of the employers on the basis of the statements of Shri Prabhakar Shette, Shri Ganeshprasad Mishra, Shri Rajan Vishvanath Karnik, Shri William Lancelot Lawrence and Shri Pavansut Ramshankar Tiwari.

16. In this factual backdrop it is not possible to state that the petitioner was adopting dilatory tactics when it called upon the petitioner to furnish copies of various documents for arriving at an adverse decision against the petitioner. It is necessary that an opportunity of hearing to be meaningful and effective has to be of such a nature that the person who is granted such an opportunity is in a position to effectively deal with all the aspects of the controversy which are sought to be referred to and relied upon for taking a view against the person who is to be heard. In the present case, admittedly the opportunity of hearing stated to have been granted was more for the purpose of ensuring that the record show that such an opportunity was granted and not to ensure that the petitioner is in a position to meet with the case put up against him.

17. In these circumstances, the impugned orders cannot be permitted to be stand and are hereby quashed and set aside. Rule is made absolute. There shall be no order as to costs.

(D.A.Mehta, J)
'Bhavesh'